

HFS 45.06 Physical plant and equipment.

(1) BUILDING.

(a) *Conformance with building codes.* Family child care centers located in other than a one or two family dwelling shall conform to the applicable Wisconsin commercial building codes. A copy of a building inspection report evidencing compliance with the applicable building codes shall be submitted to the department prior to the department's issuance of a license.

Note: The building inspection report should be sent to the appropriate regional office listed in Appendix A.

The CFS-2344 Building Inspection Report – Child Care Centers may be used to document compliance with the applicable Wisconsin Commercial Building Codes.

(b) Space and temperature.

1. A center shall have at least 35 square feet of usable floor space per child. This space shall be exclusive of passageways, bathrooms, lockers, storage areas, the furnace room, that part of the kitchen occupied by stationary equipment, and space occupied by furniture that is not intended for children's use.

2. The inside temperature of the center may not be less than 67° F.

A minimum temperature of 67° F. is determined by a thermostat reading. In rooms without thermostats, 67° F. is to be determined as follows:

- *Temperature is to be measured at 24 inches above the floor level.*
- *Infant and Toddler Rooms: Measure 6 inches above the floor.*
- *Room without windows: Temperature taken in center of a room.*
- *Room with windows: Temperature taken one foot away from windows and at the center of room and then averaged.*
- *Series of rooms with only one thermostat: The coldest room must comply with the 67° F. minimum.*

3. If the inside temperature exceeds 80° F., the licensee shall provide for air circulation with fans or other means if the center is not air conditioned.

Caution should be exercised regarding placement and condition of fans. Opening windows is not sufficient to circulate the air.

(2) PROTECTIVE MEASURES.

(a) Furnaces, water heaters, steam radiators, fireplaces, wood burning stoves, electric fans, electric outlets, electric heating units and hot surfaces such as pipes shall be protected by screens or guards so that children cannot touch them.

High-energy/efficiency furnaces are cool to the touch and, unless there are other features of the furnace that pose a hazard, they do not need to be protected.

(b) Firearms, ammunition or other potentially dangerous items located on the premises shall be kept in locked storage and may not be accessible to children.

Trigger locks alone do not constitute locked storage. Separate storage for ammunition and firearms is recommended. Examples of acceptable locked storage are: locked gun cabinets, locks on gun cases, locked rooms/closets. Attics and / or rafters may be approved by exception.

45.06(2)(b) continued

"Potentially dangerous items" such as arrows, fishing and trapping equipment may not be accessible to children.

"Inaccessible to children" means the lock can not be opened by children.

(c) Materials harmful to children, including power tools, flammable or combustible materials, insecticides, matches, drugs and any articles labeled hazardous to children, shall be in properly marked containers and stored in areas inaccessible to children.

It is recommended that "materials harmful to children" be kept in locked storage.

Alcoholic beverages should be inaccessible to children.

Any items labeled "Poisonous" or "Keep Out of Reach of Children" and items in spray cans are considered harmful to children and may not be accessible to children.

See Appendix W for instruction for obtaining a brochure from the UW Hospital Poison Control Center that can be used to help determine which common plants are poisonous. The Poison Control Center's 24-hour a day emergency phone number is 1-800-222-1222.

(d) The center shall have at least one working telephone with a list of emergency telephone numbers, including telephone numbers for the local rescue squad, fire department, police department, law enforcement agency, poison control center and emergency medical service, posted near each telephone.

If a center is located in a community with 911 service, the only phone numbers required to be posted are 911 and poison control. The street address for the center should be posted near the telephone and it is recommended that the phone number for the local child protective services agency be listed near the phone as well.

A working telephone is defined as a phone that is capable of making and receiving phone calls. Cell phones and cordless phones may be used as the only phone in a center if the phone is fully charged and there are no dead spots in the center that would prohibit calls from being received or made. If a cell phone or cordless phone is used as the only working phone in a center, the emergency numbers need to be conspicuously posted near any phone base or recharging unit and on the phone back. Cell phones or cordless phones must remain at the center when children are present. When all the children are on a field trip, the phone may be carried by the provider.

The statewide toll-free information number for poison control is 1(800)-222-1222.

(e) The center's indoor and outdoor child care space shall be free of hazards.

ASBESTOS: In situations where there is suspicion of asbestos hazard, inspection and testing should be required and appropriate containment and abatement practices should be employed. The DNR has an asbestos abatement specialist who can provide additional direction and information on Div. 2-Asbestos Abatement Section 02080 in relation to air monitoring exposure levels and clean up procedures. See web site http://www.dnr.state.wi.us/org/caer/cs/ServiceCenter/SSby_Region.html for a list of DNR offices.

OUTDOOR PLAY AREAS: See 45.06(11)(b)3.

Radon testing is recommended, but not required.

45.06(2)(f)

(f) A motor vehicle shall be immediately available at the center at all times in case of an emergency if an ambulance or first response unit cannot arrive within 10 minutes of a phone call.

(g) Differences of elevation, including open sides of stairways, elevated platforms, walks, balconies and mezzanines shall be protected by railings at least 36 inches high and designed to prevent the passage of an object with a diameter larger than 4 inches through any openings in the railing bars.

Railings are required when the differences in levels exceed 18 inches.

Differences in elevation on outside decks and porches must meet this requirement only if children play on them. For example, a front porch that children and their parents use only to enter and exit the center need not have railings. However, railings are recommended.

When the elevation of an outside deck is deemed to constitute a hazard, railings that meet the specifications in the rule above are required.

Bars in a railing that exceed the 4 inches test may be closed off with fabric mesh netting.

Where access to a different level of a home is by a spiral staircase with openings between each stair tread, and with openings, side bars or grates in excess of 4 inches, the different level may not be used, and a license may not be granted unless a method is found to prevent children from accessing the staircase.

Hand railings are recommended for enclosed staircases.

Platforms on play equipment must also meet this requirement.

(h) Smoking is prohibited anywhere on the premises of a center when children are present.

Note: Section HFS 45.03(26) defines a “premise” as a building and the tract of land on which the building is located.

(i) A hot tub located in a room or area accessible to children shall have a visible, locked, rigid cover or be enclosed by a locked fence at least 4 feet tall. The lock shall be installed so that the lock is inaccessible to children.

(j) If a hot tub is located in a room or area that is not intended for use by children, access to the room or area shall be controlled through the use of a visibly locked door. The lock shall be installed so that the lock is inaccessible to children.

A lock that cannot be opened by children will be considered “inaccessible to children.”

(k) The premises shall have no flaking or deteriorating paint on exterior or interior surfaces in areas accessible to children. Lead-based paint or other toxic finishing material may not be used on any surface on the premises.

LEAD PAINT: Homes which were built prior to 1980 may contain lead-based paint. The licensee should check with the local city or county health department for the proper procedure to eliminate lead.

45.06(2)(k) continued

When painted surfaces (built-ins, walls, ceilings, floors, stairs) are torn out or old paint is sanded, it is strongly recommended that abatement practices be initiated. When painted surfaces are peeling or deteriorating, samples of paint chips may be analyzed by the Laboratory of Hygiene in Madison or another certified laboratory.

For more information on asbestos or lead regulations, training, certification, work practices, inspections, or other asbestos or lead related questions, please use the following contact information: DIVISION OF PUBLIC HEALTH, BUREAU OF ENVIRONMENTAL & OCCUPATIONAL HEALTH, ASBESTOS AND LEAD UNIT, P.O. BOX 2659, MADISON WI 53701-2659, Phone: (608) 261-6876, Fax: (608) 266-9711, E-Mail: plicasbestoslead@dhfs.state.wi.us

(3) EMERGENCIES. Each center shall have a written plan for taking appropriate action in the event of a fire or tornado or other emergency. The center shall practice the fire and tornado plan with the children each month and document when the plan was practiced.

Note: The Licensee may use either Department's form CFS-0460, Family Child Care Fire and Safety Report or the licensee's own form to document when the fire and tornado emergency plan was practiced. Information on how to obtain the Department's form is in Appendix E.

The written plan should address exiting on all levels used by children in care. The plan should also identify items that are recommended to be with the provider such as attendance list, emergency cards, flash light, battery operated radio or cell phone.

Fire drills shall be practiced with the children every month. In addition, tornado drills shall be practiced during the tornado season which is April through October. The recommended exit time is 2 minutes maximum. The tornado shelter area should be accessible and free of hazards during tornado season.

See 45.03(6).

(4) FIRE PROTECTION.

(a) Smoke detectors shall be installed and maintained in operating condition on each level of the center and in all areas used for nap or rest periods. All smoke detectors shall be tested monthly and a record kept of the time, date and results of the test.

Note: The licensee may use either the Department's form CFS-0460, Family Child Care Center Fire and Safety Report, or the licensee's own form to record the results of smoke detector tests. Information on how to obtain the Department's form is in Appendix E.

Smoke detectors should be installed according to manufacturer's directions.

For questions regarding the appropriate placement of smoke detectors, contact your local fire department.

An attached garage does not require a smoke detector. It is not part of the "center." If an attic is used only for storage, a smoke detector is not required.

If a second floor or other level of a house is rented to another occupant, statutes require each residence to have a smoke detector. HFS 45 requires a smoke detector on each level of the "center." If the center and the other occupant of the building have different addresses, HFS 45 does not apply to the 2nd address.

45.06(4)(a)Note: continued

A door serving as a smoke barrier is not required between the basement and first floor. See HFS 45.06(7)(a)8. for information on interconnected smoke detectors and infant care.

AREAS USED FOR NAP OR REST: If bedroom doors are kept open, neither a battery-operated nor an interconnected smoke detector is required in the sleeping room. However, one is required in the immediate area.

If bedroom doors are closed, one battery-operated smoke detector or the interconnected smoke detector must be in the room used for sleeping even if there is an interconnected system outside the room.

(b) An operable fire extinguisher with a minimum rating of 2A-10BC shall be provided for the kitchen and cooking area and inspected annually, and a provider shall know how to use it. Inspection tags are not required, but documentation of the inspection must be kept on file at the center.

Note: Licensees or a commercial fire extinguisher inspector may inspect fire extinguishers.

The provider may perform the annual inspection of the extinguisher by reading the gauge. It is recommended that the extinguisher be rotated slowly before checking the gauge. Professional inspection of the extinguisher is recommended. It is recommended that fire extinguishers be recharged or replaced every 5 years.

Compliance with annual inspection requirements may be demonstrated by recording the inspection date on the tag of the extinguisher.

A larger extinguisher may be used without an exception.

(c) Unvented gas, oil or kerosene space heaters are prohibited.

Written approval for of the installation of vented gas, oil or kerosene space heaters should be obtained from an insurance agent, the local fire department or a building inspector. Written approval from the furnace installer is not acceptable due to the perception of a conflict of interest.

Electric space heaters should have an automatic shut off.

Space heaters should not be used near flammable materials.

Space heaters should be guarded as specified in HFS 45.06(2)(a).

(d) A woodburning stove may be used only if it meets standards specified under s. COMM 23.045.

Written approval of the wood burning stove installation should be obtained from an insurance agent, local fire department or a building inspector. External wood burning furnaces do not need written approval. Treated or painted wood should not be burned because of the chemical fumes. Treated wood is green, yellow or brown.

Wood burning stoves should be guarded as specified in HFS 45.06(2)(a). Wood burning stoves are regulated in the Uniform Dwelling Code Comm 21.29-21.32

45.06(5)

(5) SANITATION. The premises, furnishings and equipment shall be free from litter and vermin and maintained in a sanitary condition and in good repair.

Vermin is defined as any of various insects, bugs, or disease carrying animals such as mice, rats, weasels, flies or roaches.

An integrated pest management program is recommended to reduce unnecessary exposure to pesticides. See www.datcp.state.wi.us/arm/agriculture/pest-fert/pesticides/school-imp.jsp for more information.

The exterior of the building should be free of openings around cables and utilities, under doors or broken windows. The garbage storage area should be free of litter, rubbish piles, burrow holes and animal droppings and should be rodent proof. Metal containers are recommended.

The term "In good repair" includes, but is not limited to, broken windows, doors, door latches, steps and railings, torn linoleum or missing tiles, flaking or deteriorating paint, leaking roofs or flooding or leaking basements if used for child care or emergency shelter.

(6) WATER.

(a) If the center gets its water from a private well, water samples from the well shall be tested annually by a laboratory certified under ch. HFS 165 and shall be found bacteriologically safe. The laboratory report shall be available to the department upon request.

(b) If the center is licensed to care for infants under 6 months of age, the center shall have nitrate levels in the water tested annually.

This refers to private well water only.

(c) If water test results indicate the water is bacteriologically unsafe or has nitrate levels that exceed the recommended limits, the water shall be appropriately treated and re-tested until it is determined to be safe. Bottled water shall be used until the water is determined to be safe.

NITRATES: Wisconsin standard is 10 milligrams per liter (10 mg) for nitrates. Drinking water with nitrate levels over 10 mg/liter is a health hazard to infants 0-6 months of age and may cause "blue-baby" syndrome. Refer to HFS 45.06(2)(e). If the water continues to test high for nitrate levels then an exception may be granted for permanent use of bottled water for those children under 6 months of age.

Recommended Procedure if the nitrate level is over 10 mgs:

- *Do not give this water to infants under 6 months of age either directly or in formula.*
- *Do not boil high-nitrate water since boiling increases the nitrate level.*

Water samples may be tested at private laboratories or the State Lab of Hygiene, 465 Henry Mall, Madison, WI 53706; (608) 262-1293. Refer to www.dnr.state.wi.us for list of certified labs.

If the test indicates that the water is bacteriologically unsafe, the licensee shall contact the local public health department or the DNR to come up with a suitable plan of correction. Use of bottled water is a temporary solution to a well that tests bacteriologically unsafe. Wells must be treated and re-tested until they are determined to be safe.

(7) EXITS, DOORS AND WINDOWS.

45.06(7)(a)

(a) *Exits.*

1. All exits shall be clear of obstructions.

Exits, including window wells that are accepted as exits, may not be blocked with snow or other obstructions.

Coverings for windows used as exits must be easily removed by children in an emergency.

Plastic sheeting covering a window is not permitted for windows being used as a required second exit.

2. Each floor or level occupied by children shall have at least 2 exits.
3. Exits shall be located as far apart as practical.
4. The width of every exit door shall be at least 2 feet 6 inches.
5. The primary exit shall be a door or stairway providing unobstructed travel to the outside of the building at street or ground level.
6. The secondary exit shall be one of the following:
 - a. A door or stairway that provides unobstructed travel to the outside of the building at street or ground level.
 - b. A door or stairway leading to a platform or roof with railings complying with sub. (2)(g), which has an area of at least 25 square feet, is at least 4 feet long, and is not more than 15 feet above ground level.

If the platform area does not meet the above specifications, refer to the window rule HFS 45.06(7)(a)6.c.

- c. A window that is not more than 46 inches above the floor, capable of being opened from the inside without the use of tool or removal of a sash, and which has a nominal window opening size of at least 20 inches in width and 24 inches in height.

An outside platform is not required for a second-floor window.

A nominal window opening is the size of the exiting area when the window is open.

The window must be capable of being opened from the inside by an adult. This includes storms and screens. If the storm or screen cannot be opened from the inside, the storm or screen may not be installed on the window serving as a second exit.

An exception may be granted to the exact dimensions of the window under the condition that the slight variation in dimensions provides a window area equal to or larger than that specified in the rule and still permits the children in care to exit. The provider should develop a plan for exiting from the secondary exit after consulting with the local fire department, and it is recommended this be addressed in the center policies.

7. If care is provided in a basement, all of the following apply:

45.06(7)(a)7.a.

a. The primary exit shall be a door or stairway that provides unobstructed travel to the outside of the building at street or ground level.

b. The secondary exit shall be either a door or stairway leading to the ground level or a window not more than 46 inches above the floor that is capable of being opened from the inside without the use of tool or removal of a sash, and which has a nominal window opening size of at least 20 inches in width and 24 inches in height. The window shall open directly to the ground or to a window well with an area of at least 6 square feet that is not more than 46 inches below the ground.

In the case of a basement, if a window is being used as the second exit, the window must meet the requirements of HFS 45.06(7)(a)7.b. The bottom of the window may not be more than 46 inches from the floor of the basement or there must be a permanently fixed platform. The platform must be at least the width of the window.

8. Two children under 24 months of age may be cared for on a level that is more than 6 feet up or down from the ground level if the center is equipped with an interconnected smoke detection system in operating condition.

CARING FOR CHILDREN UNDER 24 MONTHS OF AGE: The key to determining how many children under 24 months of age may be cared for, if any, and where they may be cared for is the measurement of 6 feet up or down from ground level.

The measurement is taken from the floor of the room to the ground outside of the approved exit. (The ground outside the exit, in the case of an approved window exit with a window well, is the top of the window well.)

- If the measurement to either exit is less than 6 feet up or down, all children under 24 months of age may be cared for in the area, providing all other applicable rules are met.*
- If the measured distance for both exits is more than 6 feet up or down and there is an interconnected smoke detection system present, then one or two children under 24 months may be cared for in the area.*
- If the measured distance for both exits is more than 6 feet up or down and there is not an interconnected smoke detection system present, no children under 24 months may be cared for in the area.*

In this section, an interconnected smoke detection system means a system where smoke detectors located throughout the building are connected so that all detectors in the building sound an alarm when one detector is activated. The system does not necessarily need to be connected to the electrical system of the house or apartment (e.g., radio-controlled or battery-operated). An interconnected smoke detector is not required in the attic portion of a house.

An exception is not required if a provider's own child under age 2 sleeps in his/her own bed on the second floor of the child care center and the center is not equipped with interconnected smoke detectors. The licensee should have a plan in the event that an emergency evacuation is necessary. The licensing specialist may discuss the plan with the licensee/provider.

See HFS 45.06 (1)(a) if the building is not a 1- or 2-family residence.

(b) Doors and windows.

1. Every closet door latch shall be capable of being opened by children from inside the closet.

45.06(7)(b)2.

2. Every toilet room door lock shall be designed to permit the locked door be opened from the outside in an emergency, and the opening device shall be readily accessible to a provider.

3. Windows that are capable of being opened and located in areas of the center that are accessible to children shall have screens.

If a window is locked or sealed shut and is not capable of being opened it does not need a screen.

(8) FURNISHINGS.

(a) Furnishings shall be durable and safe, with no sharp, rough, loose or pointed edges.

(b) The furnishings shall include all of the following:

1. Table space and seating for each child.

Highchairs and feeding tables for infants and toddlers are included in determining the required number of chairs.

Booster seats are recommended for smaller children using adult-sized chairs at a table.

2. Storage space for equipment, cots, if used, bedding, children's clothing and personal belongings.

Examples of storage space for play equipment are drawers, shelves, cabinets and boxes.

Cots, sleeping bags and mats may be stored in closets or stacked in a room.

Outer-garment storage may be on hooks, hangers, in a clothing cubby or on a bed that is not used by children for sleeping. Personal storage may be provided in a variety of ways including baskets, round potato chip or ice cream containers, shopping bags, diaper bags, shoe boxes, knapsacks, etc.

3. A safe, washable cot, bed, 2-inch thick mat or sleeping bag for each child one year of age or older who naps or sleeps.

4. A safe, washable crib or playpen for each child under one year of age who naps or sleeps.

Note: See Appendix D for information related to safe cribs.

(9) KITCHENS.

(a) Equipment and utensils for preparing, serving and storing food shall be clean and equipped for the safe handling of food. Eating surfaces shall be washed before use.

(b) Reusable eating and drinking utensils shall be thoroughly cleaned with detergent and hot water and rinsed after use. Single use articles such as food containers designed to be used only once and discarded including plastic silverware, paper or styrofoam cups and plates may not be reused.

A single-use plastic container may not be used to store food if it originally contained nonfood products. A single-use plastic container used by the processor to package food may be reused for food storage if the container is smooth, easily cleanable and durable.

45.06(9)(b) continued

“Cool Whip” containers and deli containers are acceptable. Single-use food storage bags are acceptable. Bags with a zip type closure are recommended.

(c) Food shall be clean, wholesome, free from spoilage and from adulteration and misbranding, and safe for human consumption.

Meat and poultry must be processed in a facility inspected by the USDA or the state.

Home-frozen foods are acceptable.

Home-canned foods may not be used for children in care except for high-acid foods including apples, apricots, berries, cherries, grapefruit, peaches, pineapple, rhubarb and tomatoes.

Fresh produce from a farmer or the provider's garden is acceptable. Home-raised eggs are acceptable by exception with parental and food program permission.

(d) Food shall be covered and stored at temperatures that protect against spoilage. Refrigerators shall be maintained at 40° F. or lower and freezers shall be maintained at 0° F. or lower.

Thermometers are recommended for each cold storage compartment to ensure that the appropriate temperature is maintained.

Prepared food should not be allowed to sit out on counters. Frozen foods shall be thawed in the refrigerator, under cold running water or on the defrost setting in a microwave oven. No frozen potentially-hazardous food may be defrosted by leaving it at room temperature. Food should be maintained at temperatures below 40° F. or above 150° F. “Potentially-hazardous food” includes all custard-filled and cream-filled pastries, milk and milk products, meat, fish, shellfish, gravy, poultry stuffing and sauces, dressings, salads containing meat, fish, eggs, milk or milk products and any other food or food product likely to spoil quickly if not kept at the proper temperature.

(e) Leftovers shall be discarded after 36 hours unless frozen for later use.

(10) WASHROOMS AND TOILET FACILITIES.

(a) There shall be at least one toilet with plumbing and one sink with hot and cold running water available for use by the children.

If the toilet and sink are located on a floor that has not been approved for use by children, the bathroom may be used by children.

The maximum hot water temperature should not exceed 120° F. Scald-prevention devices are recommended.

When the only bathroom sink is on a second floor, the use of the kitchen sink for handwashing is not recommended but is not prohibited.

(b) Soap, toilet paper and a waste paper container shall be provided in the washroom and accessible to children.

Liquid soap is recommended. Hand sanitizers do not replace soap and running water. See HFS 45.07(6)(g)I regarding availability of individual hand towels.

45.06(11)

(11) OUTDOOR SPACE.

(a) *Requirement for outdoor play space.* A center shall have outdoor play space if any child is receiving care for more than 3 hours a day.

Three hours is determined by hours of operation in the terms of the license. Three hours means three consecutive hours. When a program is exempt from meeting the requirement for outdoor space by virtue of three or less hours of operation, but chooses to provide an outdoor play period, rules on outdoor space apply.

(b) *Required features of outdoor play space.* Except when an exemption is requested and approved by the department under par. (c), a center shall comply with all of the following requirements for outdoor play space:

When family child care centers are licensed to operate on both sides/levels of a duplex or in adjoining apartments in a multi-unit apartment they need to have a scheduled outdoor play time separate from the other group of children. Staff-to-child ratios must be maintained.

1. The outdoor play space shall be on the premises of the center.
2. There shall be at least 75 square feet of outdoor play space for each child using the space at a given time.
3. The outdoor play space shall be well-drained and shall be free of hazards. Structures such as playground equipment, railings, decks and porches accessible to children and built with CCA-treated lumber shall be sealed with an oil-based sealant or stain.

In an outdoor play area, hazards may include, but are not limited to, basement stairwells not protected by fence or gate, lawn sprinkler valve boxes recessed several inches below ground with no cover, broken glass or cans, wood piles, holes, fences and enclosures with sharp edges or points near adjacent climbing equipment, etc.

"Well drained" must be related to the season and ground conditions.

It is recommended that providers keep a receipt, a label or a copy of a label which clearly indicates the product is oil based and the date the product was purchased.

Wood treated with the oil-based products creosote and pentachlorophenol (PCP) can also be toxic. These chemicals are typically found in railroad ties and utility poles. Structures made with these materials cannot be adequately sealed and will be considered a hazard. Children should not be permitted to come in contact with wood treated with either of these products.

See also commentary under 45.06(11)(b)4.

4. A permanent enclosure not less than 4 feet high shall be provided where there are hazards nearby, including traffic or bodies of water, which present a threat to the safety of children in care.

The determination of hazard and the requirement for an enclosure is at the discretion of the department.

The provider may supervise school-age children from within the house if they are within sight or sound and have been informed of the boundaries. The provider must be able to guide the behavior and activities of the children as defined in HFS 45.03(34).

45.06(11)(b)4. continued

When there are bodies of water such as a water garden, fishpond, etc. on the premises and a 4-foot high fence per HFS 45.06(11)(b)4 is not provided, or the body of water is within the fenced-in play area, an exception must be requested or a fence must be installed. The request for exception will need to include a detailed plan for the protection of the children. Some of the items to be considered when writing or evaluating the exception request include evaluation of the following items:

- *The ages of the children as specified in the terms of the license*
- *The location of the water garden, fish pond, etc. in relation to the usual play area of the children*
- *The location of the exits from the building and the play area in relation to the water garden, fish pond, etc.*
- *Any other circumstances which may affect the safety of the children.*
- *The compliance history of the center with respect to supervision of the children and previous enforcement actions.*

The exception request must include the condition that the provider or other adult be outdoors with the children under sight and sound supervision at all times. The exception request must be reviewed by the chief of the regional licensing office and shall be periodically reviewed by the licensing specialist and chief to ensure that the circumstances of the exception remain essentially the same.

Failure to comply with the conditions of the exception could result in withdrawal of the exception and/or initiation of other enforcement actions such as forfeiture or revocation of the license.

Cross reference: HFS 45.06(12)(a) – swimming pools and HFS 45.06(2)(i) – hot tubs.

5. Concrete and asphalt are prohibited under climbing equipment, swings and slides.

Energy-absorbing ground cover is recommended beneath slides, climbing equipment and swings and in a four-foot fall zone around the equipment per US Consumer Product Safety Commission.

(c) *Exemption for off-premises play space.*

An exemption for off-premises play space will not be approved if there is space available on the premises.

1. In this paragraph, “main thoroughfare” means a heavily traveled street or road used by vehicles as a principal route of travel.

2. If a center has no outdoor play space available on the premises of the center, the licensee may request an exemption from the requirements under subd. 3. for the center’s outdoor play space.

3. A request for an exemption under subd. 2. shall be in writing and shall be accompanied by a plan for outdoor play space that does all the following:

a. Identifies and describes the location to be used, the travel distance from the center to that location and the means of transporting the children to that location.

b. Provides for adequate supervision of the children as specified in Table 45.05.

c. Provides for daily vigorous exercise in the out-of-doors for the children.

d. Describes the arrangements to meet the toileting and diapering needs of the children.

e. Affirms the center’s compliance with the requirements included in subds. 4. to 7.

45.06(11)(c)3.e.Note:

Note: Send the request for an exemption, including the plan for the use of that space, to the licensing representative at the appropriate regional office of the Department's Division of Children and Family Services. See Appendix A for addresses of the regional offices.

4. The off-premises outdoor play space shall be free of hazards such as bodies of water, railroad tracks, unfenced swimming pools, heavily wooded areas and nearby highways and main thoroughfares.

5. There shall be at least 75 square feet of play space for each child using the space at a given time.

6. No climbing equipment, swing or slide in the play space may have concrete or asphalt under it.

7. When the off-premises outdoor play space is reached by walking, the center shall transport children under 3 years of age in wheeled vehicles, such as strollers or wagons, with a seating capacity equal to the number of children under 3 years of age to be transported.

8. A center's plan for use of an off-premises outdoor play space is subject to approval by the department. Within 30 days after receipt of a plan and request for an exemption from the requirements under par. (b), the department shall either approve the plan and grant the exemption or not approve the plan and deny the request for exemption. The department shall notify the center in writing of its decision and if it does not grant an exemption, shall state its reasons for not granting the exemption.

9. If any circumstance described in an approved plan for use of off-premises outdoor play space changes or if any condition for plan approval is not met, the department may withdraw its approval of the plan and cancel the exemption. A center with an approved plan shall immediately report to the department's licensing representative any significant change in any circumstance described in the plan.

(12) SWIMMING AREAS.

(a) Swimming pools on the premises of the center may not be used by children in care. Swimming pools on the premises shall be surrounded by a permanent enclosure as specified under sub. (11)(b)4. In addition, the all of the following restrictions apply:

<i>Swimming pools on the premises may be used by the provider's own children over the age of 7 years during the hours of operation.</i>

1. If access to the pool is through a gate, the gate shall be closed and locked during the center's hours of operation.

2. If access to the pool is through a door, the door shall be closed, visibly locked and equipped with an alarm at the door that signals when someone has entered the pool area. The door may not be used as an exit.

3. Locks shall be located so that the locks cannot be opened by the children.

4. The free-standing wall of an above ground pool may not serve as an enclosure unless it is at least 4 feet in height and not climbable. If a ladder is present, the ladder shall be removed or raised up so that it is inaccessible to children.

5. The area around the pool enclosure shall be free of toys or equipment that would allow a child to climb or otherwise gain access to the pool.

45.06(12)(b)

(b) Wading pools may be used if the water is changed daily and the pool is disinfected daily.

A stipulation must be signed requiring the provider to be outdoors having all children under sight and sound supervision at all times when there is water in the wading pool and children are outside.

The American Academy of Pediatrics, in the book Caring for Our Children – National Health and Safety Performance Standards for Out of Home Care, states that the use of wading pools for children is not recommended. Instead, sprinklers, hoses or water tables may be used as an alternative for water play. Standing water, in addition to posing a risk of drowning, is a breeding ground for bacteria and disease-carrying insects.

(c) A swimming pool or beach that is not located on center premises may be used by children, if all of the following conditions are met:

1. The construction and operation of the pool meet the requirements of chs. Comm 90 and HFS 172 for public swimming pools and the beach complies with any applicable local ordinance.

2. Certified lifesaving personnel are on duty.

Lifeguards are required when children are in the water. Lifeguards may not be counted in the staff-to-child ratio.

3. While children are in the water of a pool or beach, the following staff-to-child ratios for persons who can swim are met:

Even if only one child is in the water, swimming staff-to-child ratios need to be met. See Appendix I for a swimming staff-to-child ratio worksheet. If children are in and out of the water, at least two providers need to be present. The word “persons” is referring to a child care provider.

Swimming staff-to-child ratios do not apply to organized swim lessons, but regular staff-to-child ratios should be maintained in or near the pool area. Swimming staff-to-child ratios do apply to public wading pools.

a. For children under 2 years of age: 1:1.

b. For children 2 and 3 years of age: 1:3.

c. For children 4 and 5 years of age: 1:6.

d. For children 6 years of age and older: 1:8.

4. When a mixed age group of children are swimming, the staff-to-child ratio shall be adjusted based on to the number of children in the water and each child’s age.

Note: A worksheet to help calculate the staff to child ratio for mixed aged groupings during swimming is available from the department upon request. Requests may be made to the licensing representative or regional office in Appendix A.

5. A child shall be restricted to the area of the pool or beach that is within the child’s swimming ability.